



## **Resumption of In-Person Hearings**

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the “Commission”) is resuming in-person hearings in the manner described below until December 31, 2021, or until such earlier date determined by the Commission’s Office of the Chief Administrative Law Judge (“OCALJ”) and published in a notice appearing in the Federal Register and posted on the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)).

**DATES:** Applicable: September 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935.

**SUPPLEMENTARY INFORMATION:** Commission Administrative Law Judges are committed to a high standard to protect the health and safety of all attorneys, representatives, parties, and witnesses who may appear before them, during the Coronavirus 2019 (COVID-19) pandemic, while continuing the agency’s mission. On July 30, 2021, Commission Chief Administrative Law Judge Glynn F. Voisin issued an order, which is posted on the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)). The contents of the order are set forth in this notice.

As of September 1, 2021, the Commission will resume the pre-pandemic norm of in-person hearings, but for the duration of the Chief Judge’s July 30 order, all hearings are subject to the following terms set forth in the order.

Upon motion of a party or if necessary for safety, Commission Judges may, at their sole discretion, hold remote hearings or require specific procedures to provide for safety. Commission Judges shall exercise this discretion within uniform parameters as set

forth herein. Each Judge shall determine (1) when to use remote hearings (e.g., via Zoom) in lieu of in-person hearings or (2) specific safety procedures to be used at an in-person hearing.

In determining use of a remote hearing, Judges will consider safety factors on a case-by-case basis. Judges also have the discretion to hold a hybrid hearing, that includes both in-person and video hearing. Judges will ensure all parties appearing *pro se* who are required to participate in a remote hearing have access to necessary equipment.

Prior to setting in-person hearings Judges will have a conference call with the attorneys and representatives of each of the parties, to discuss the considerations of the parties for the in-person hearing and to seek a commitment to all requirements ultimately set forth by the Judge. Judges may discuss the agency's travel guidelines, protocols, and safety measures but will not ask if participants are vaccinated. All fully vaccinated persons may attend the hearing in person. Persons who are not fully vaccinated, or who are not comfortable with travel or appearing in person, may make a request to attend the hearing virtually.

The Judge will set a hearing location after considering the safety and health rules currently in place by the state and local public health entities. In choosing a courtroom, the Judge will take into consideration the rules and requirements of that courthouse or hearing facility, as well as all applicable federal, state, and local regulations and guidelines. If the hearing is to be a hybrid hearing, the Judge will also consider the availability of internet and video needs in the courtroom.

During the prehearing conference, the Judge will inform the parties of the state, local and courtroom requirements and seek a commitment to adhere to those requirements. The requirements apply to all attorneys, assistants, parties, and witnesses. The discussion will also address who may enter the courtroom, when, and what safety measures, such as masks and social distancing, must be implemented. No person may

enter the courtroom, or the witness room without the permission of the Judge. The Judge may consider allowing persons who are not fully vaccinated to enter the courtroom, but they must wear masks and practice social distancing.

All court reporters will be notified that they must be vaccinated.

The Judge may consider all factors, in totality, in determining if a remote hearing will be held and who may be present for the hearing. No single factor is dispositive.

These procedures shall be in place until December 31, 2021, unless extended or modified by order. The order shall be posted on the Commission's website ([www.fmshrc.gov](http://www.fmshrc.gov)) and the contents of the order will be published in a notice appearing in the Federal Register.

Authority: 30 U.S.C. 823; 29 CFR part 2700.

Dated: July 30, 2021.

**Sarah L. Stewart,**

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